

**08 C 862**

**JUDGE KENNELLY  
MAGISTRATE JUDGE BROWN**

# **EXHIBIT A**

**Part 7 of 14**

Policy Number:

## Tenant Legal Liability Causes of Loss

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

#### LIABILITY COVERAGE PART.

##### A. Covered Causes Of Loss.

All Causes of Loss unless the Cause of Loss Property is excluded elsewhere in this form.

##### B. Exclusions.

1. We will not pay for loss to caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

###### a. Water.

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not;
  - (c) Doors, windows or other openings.

But if Water, as described in SECTION I. C. 1. a.(1) through a.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss caused by that fire, explosion or sprinkler leakage.

If loss is caused by or results from water that is not excluded above or elsewhere in this form, we will pay the cost to tear out and

replace any part of the building or structure in order to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the loss, but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage results in discharge of any substance from an automatic fire protection system and is directly caused by freezing.

###### b. Earth Movement.

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence, or earth sinking, rising, or shifting. But if earth movement results in fire or explosion, we will pay for the loss caused by that fire or explosion.
- (2) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss caused by that fire, building glass breakage or volcanic action.

**c. Government Action.** Seizure or destruction of property by order of governmental authority. But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread.

**d. Nuclear Hazard.** Nuclear reaction or radiation or radioactive contamination, however caused. But if nuclear reaction or radiation, or radioactive contamination,

results in fire, we will pay for the loss caused by that fire.

- e. Power Failure.** The failure of power or other utility service supplied to your premises however caused, if the failure does not take place on the described premises. But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss caused by that Covered Cause of Loss.

**f. War and Military Action.**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for loss caused by or resulting from any of the following:

- a. Breakage of Fragile Articles** such as glassware, statuary, marble, chinaware and porcelain unless caused by the "specified causes of loss" or building glass breakage. This exclusion does not apply to:

- (1) Glass that is part of a building or structure;
- (2) Containers or showcases of property held for sale; or
- (3) Photographic or scientific instrument lenses.

**b. Collapse**, except as provided below.

- (1) We will pay for loss caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused by one or more of the following:
  - (a) The "specified causes of loss" or breakage of building glass, all only as insured against in this policy;
  - (b) Hidden decay;
  - (c) Hidden insect or vermin damage;
  - (d) Weight of people or personal property;
  - (e) Weight of rain that collects on a roof, patio, or terrace;
  - (f) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.
- (2) If the direct physical loss does not involve collapse of a building or any part of a building, we will pay for loss caused by the collapse of personal property only if:

- (a) The personal property which collapses is inside a building insured under this policy; and
  - (b) The collapse was caused by a cause of loss listed in SECTION I. C. 2. b. (1) (b) through (1) (f) above.
- (3) If loss by a Covered Cause of Loss results from collapse at the described premises, we will pay for that resulting loss.
- (4) We will not pay for loss to the following type of property, if otherwise covered by this insurance, under SECTION I. C. 2. b. (1) (a) through (1) (f) above unless the loss is a direct result of the collapse of a building:
- Awnings, gutters and downspouts; yard fixtures; outdoor swimming pools; fences, piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.
- (5) We will not pay for settling, cracking, shrinkage, bulging or expansion.
- c. **Consequential Loss**, including delay, loss of use or loss of market.
  - d. **Disappearance of Property**, meaning loss that solely depends on any audit of records or any inventory computation to prove its factual existence.
  - e. **Dishonesty**. Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your or their partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Whether acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your "employees" or "leased workers", but does apply to "theft" by "employees" or "leased workers".

With respect to accounts receivable and "valuable papers and records," this exclusion does not apply to carriers for hire.

- f. **Electrical Apparatus**. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires. But if artificially generated current results in fire, we will pay for the loss caused by that fire.
- g. **Exposed Property**. Rain, snow, ice or sleet to personal property in the open.
- h. **False Pretense**. Voluntary parting with possession of any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- i. **Freezing**. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment caused by or resulting from freezing, while your premises are "vacant" or unoccupied, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the water supply if the heat is not maintained.

This exclusion does not apply to loss from fire protection systems.

**j. Heating Equipment, Boilers.**

- (1) Any condition or event inside steam boilers, steam pipes, steam engines or steam turbines. But we will pay for loss to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- (2) Any condition or event inside hot water boilers or other water heating equipment, other than an explosion.

**k. Other Types of Loss.**

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, hidden decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking, bulging or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;

(6) "Mechanical breakdown"; or

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in SECTION I. C. 2. k. (1) through k. (7) above results in a "specified cause of loss" or building glass breakage, we will pay for the loss caused by that "specified cause of loss" or building glass breakage.

**l. Smoke, Vapor, Gas.** Smoke, vapor or gas from agricultural smudging or industrial operations.

**m. Steam Apparatus.** Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss caused by that fire or combustion explosion. We will also pay for loss caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

**n. Substance Seepage or Leakage.** Seepage or leakage of any substance that has manifested and is then continuous or repeated.

3. We will not pay for loss caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss." But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss," we will pay for the loss caused by that "specified cause of loss."

4. We will not pay for the loss caused by or resulting from any of the causes of loss listed in SECTION I. C. 4. a. through 4. c. below. But if an excluded cause of loss that is listed in SECTION I. C. 4. a. through 4. c. below results in a Covered Cause of Loss, we will pay for the loss caused by that Covered Cause of Loss.

a. **Acts or Decisions.** Acts or decisions including the failure to act or decide, of any person, group, organization or governmental body.

b. **Negligent Work.** Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Designing, specification, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

c. **Weather Conditions.** But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in SECTION B. 1. a. through 1. f. above to produce the loss.

The following is added to SECTION V. DEFINITIONS:

20. "Mechanical breakdown" means any actual breakdown or actual interruption of the intended function or operation of a machine or other equipment caused by or resulting from:

a. Any part of the machine or other equipment;

b. Any condition or event within the machine or other equipment; or

c. Any rupture or bursting caused by centrifugal force.

21. "Specified causes of loss" means the following: Fire, lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; "volcanic action"; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means loss caused by the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or similar rock formations. Sinkhole collapse does not include the cost of filling sinkholes or sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss to:

- (1) Personal property in the open; or
  - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.
22. "Theft" means stealing or any unlawful taking of property.
23. "Vacant" means 70% or more of the building or condominium unit is not rented or does not contain enough business personal property to conduct customary "operations." Buildings under construction are not considered vacant.
24. "Volcanic action" means direct loss resulting from the eruption of a volcano when the loss is caused by:
- a. Airborne volcanic blast or airborne shock waves;
  - b. Ash, dust or particulate matter; or
  - c. Lava flow.
- All volcanic eruptions that take place within any consecutive 168-hour period will constitute a single "volcanic action."
- "Volcanic action" does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss.



Policy Number: BK01116165

**Transfer Of Rights Of Recovery Against Others  
WAIVER**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

- ☒ LIABILITY COVERAGE PART
- ☐ BUSINESS AUTO COVERAGE PART (SECTION II)
- ☐ COMMERCIAL UMBRELLA LIABILITY COVERAGE PART.

**Designated Person Or Organization:**

BLANKET WAIVER OF RIGHTS OF RECOVERY WHEN REQUIRED BY A WORK CONTRACT

**Contract Number:**

**Description of Project:**

**Location of Project:**

We waive any right of recovery we may have against the person or organization designated in the Schedule because of payments we make for injury or damage arising out of work you perform under a contract with the designated

person or organization. The waiver applies only to the designated person or organization and the work you perform must be under the contract, and for the project and location, designated in the Schedule.



Policy Number: BK01116165

## Broadened Liability Coverage Endorsement

ARCHITECTS AND ENGINEERS

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

#### LIABILITY COVERAGE PART.

The following changes are made to the LIABILITY COVERAGE PART.

1. The following paragraph is added to SECTION I - COVERAGE:

#### E. Additional Insured Exclusions

1. In addition to the other exclusions applicable to COVERAGES A., B. and C., the insurance provided to an Additional Insured does not apply to:

#### a. "Property damage" to:

- 1) Property owned, occupied or used by the Additional Insured;
- 2) Property rented, leased or loaned to, in the care, custody or control of, of over which physical control is being exercised for any purpose by the Additional Insured; or
- 3) "Your work" performed for the Additional Insured.

- b. "Bodily injury," "property damage," "personal injury," or "advertising injury" which is not caused in whole or in part by the negligent acts or omissions of any Named Insured, or the negligent acts or omissions of anyone directly or indirectly employed by a Named Insured or for whose acts a Named Insured may be liable.

2. Paragraph 1.b. of SECTION II. - WHO IS AN INSURED is replaced by the following:

A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business. You are an insured for your participation in any past or present "unnamed joint venture" if there is no other similar insurance available to that organization. This protection does not apply if the "unnamed joint venture" has direct employees; or owns, rents, or leases any real or personal property. Nor does it apply to any other member of the "unnamed joint venture."

3. The following is added to paragraph 2. of SECTION II. - WHO IS AN INSURED:

- i. If you are required to add another person or organization as an insured under this policy by a written work contract or agreement which is in effect during the policy period and a certificate of insurance has been issued listing that person or organization as an Additional Insured, that person or organization is an insured. Such person or organization is referred to in this Coverage Part as an Additional Insured.

4. The final paragraph in SECTION II - WHO IS AN INSURED is replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

5. Paragraph 2. Of SECTION III - LIMITS OF LIABILITY is replaced by the following:

The General Aggregate Limit is the most we will pay for each of "your premises" listed in the Schedule of Premises and each of "your work sites".

6. With respect to 3.i. above the following additional provision applies:

SECTION IV.5. Other Insurance is replaced by the following:

**5. Other Insurance**

The insurance afforded by this Coverage Part is primary insurance and we will not seek contribution from any other insurance available to the insured unless the other insurance is provided by a contractor. Then we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. The following are added to SECTION V - DEFINITIONS

"Unnamed joint venture" means any joint venture with other architects or engineers that is not named in the Liability Coverage Part Declaration.

"Your premises" means any premises, site, or location that you own or rent or lease from others.

"Your work sites" means any premises, site, or location at, on, or in which your work is not yet completed, other than your premises.

All other terms of the policy remain the same.

Policy Number: BK01116165

**Owners, Lessees Or Contractors (Form B)**

**ADDITIONAL INSURED**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

LIABILITY COVERAGE PART.

**Schedule**

**Name of Person or Organization:**

TISHMAN SPEYER PROPERTIES LP AND TST 233 N MICHIGAN AVE LLC  
233 N MICHIGAN AVE STE #2100  
CHICAGO, IL 60601

SECTION II - WHO IS AN INSURED is amended to include as an insured the person or organization shown in the

Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Policy Number: BK01116165

**Owners, Lessees Or Contractors (Form B)**

**ADDITIONAL INSURED**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

LIABILITY COVERAGE PART.

**Schedule**

**Name of Person or Organization:**

U.S. EQUITIES REALTY, LLC AS AGENT FOR OWNER CATELLUS FINANCE 1, LLC. OWNER  
244 SOUTH MICHIGAN AVE SUITE 266  
CHICAGO, IL 60604

SECTION II - WHO IS AN INSURED is amended to include as an insured the person or organization shown in the

Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Policy Number: BK01116165

**Owners, Lessees Or Contractors (Form B)**

**ADDITIONAL INSURED**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

LIABILITY COVERAGE PART.

**Schedule**

**Name of Person or Organization:**

DEPARTMENT OF VETERANS AFFAIRS  
GREAT LAKES HEALTHCARE SYSTEM  
ACQUISITION CENTER  
5000 WEST NATIONAL AVE BUILDING 5  
MILWAUKEE, WI 53295

SECTION II - WHO IS AN INSURED is amended to include as an insured the person or organization shown in the

Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Policy Number: BK01116165

**LIABILITY BROADENING ENDORSEMENT****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

## LIABILITY COVERAGE PART.

1. Exclusion A.2.b. Contractual Liability of **SECTION I – COVERAGE** is replaced by the following:

**b. Contractual Liability**

"Bodily injury", "property damage", "personal injury" or "advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs, or the "personal injury" or "advertising injury" is first committed, subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. Exclusion A.2.r. "Personal Injury" or "Advertising Injury" of **SECTION I – COVERAGE** is replaced by the following:

**r. "Personal Injury" or "Advertising Injury"**

"Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period; or
- (3) Arising out of a criminal act committed by or with the consent of the insured.

3. Section B. Medical Payments of **SECTION I – COVERAGE** is replaced by the following:

**B. Medical Payments****1. Insuring Agreement**

- a. We will pay medical payments as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable Limit of Liability. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## 2. Exclusions Applicable to the Medical Payments Coverage

We will not pay expenses for "bodily injury":

- a. To any insured, other than any of your volunteer workers.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard."
- g. Excluded under SECTION I. A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## 4. The following is added to section 2. of **SECTION II - WHO IS AN INSURED:**

- i. Any person or organization for whom a certificate of insurance has been issued listing that person or organization as an insured because of a requirement to add that person or organization as

an insured in a written contract or agreement made before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" is first committed and is in effect during the policy period, but:

- (1) only with respect to that person's or organization's liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization.

This insurance does not apply to:

- (a) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" that is first committed, after the equipment lease expires;
- (b) "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the sole negligence of that person or organization.

- (2) only with respect to that person's or organization's liability as a grantor of franchise to you.

- (3) only with respect to that person's or organization's liability arising out of the ownership, maintenance or use of that part of the premises leased to you or temporary occupied by you with permission of the owner.

This insurance does not apply to:

- (a) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" that is first committed, after the lease of that premises expires or after you cease to temporarily occupy that premises; or
- (b) "Bodily injury", "property damage", "personal injury", or "advertising injury" arising out of structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

- j. Any state or political subdivision that has issued a permit in connection with premises you own, rent or control and to which this insurance applies, but only with respect to the following hazards for which the state or political subdivision has issued a permit:



- (1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners or decorations and similar items;
  - (2) The construction, erection or removal of elevators; or
  - (3) The ownership, maintenance or use of any elevators covered by this insurance.
- k. Any state or political subdivision that has issued a permit, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to:

- (1) "Bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for the state or political subdivision; or
- (2) "Bodily injury" or "property damage" included within the "products completed operations hazard."

5. Section 4. of **SECTION II – WHO IS AN INSURED** is replaced by the following:

- 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to "bodily injury" or "property damage" that occurred, or to "personal injury" or "advertising injury" arising out of an offense committed, before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

6. Paragraph 5. Other Insurance of **Section IV - CONDITIONS** is replaced by the following:

5. **Other Insurance**

If valid and collectible "other insurance" is available to the insured for a loss we cover under SECTION I. A. of this Coverage Part, our obligations are limited as follows:

a. **Primary Insurance.**

This insurance is primary except when SECTION IV. 5. b. below applies. If this insurance is primary, our obligations are not affected unless any of the "other insurance" is also primary. Then, we will share with all that "other insurance" by the method described in SECTION IV. 5. c. below.

b. **Excess Insurance.**

This insurance is excess over any of the "other insurance" whether primary, excess, contingent or any other basis that:

- (1) Insures for direct physical loss of or damage to property;
- (2) Is available to the insured with respect to the conduct of any past partnership or joint venture; or
- (3) Is available to the insured for:
  - (a) Work or operations performed on the insured's behalf; or
  - (b) The insured's acts or omissions in connection with the general supervision of such work or operations.
- (4) Is available to the insured covering liability for damages arising out of the premises or operations for which the insured has been added as an additional insured by endorsement.

When this insurance is excess, we will have no duty under SECTION I. A. to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over "other insurance", we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such "other insurance" would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that "other insurance."

We will share the remaining loss, if any, with any "other insurance" that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Liability shown in the Liability Coverage Part Declarations.

**c. Method of Sharing**

If all of the "other insurance" permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the "other insurance" does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**7. Section 6. "Coverage Territory" of SECTION V – DEFINITIONS is replaced by the following:**

**6. "Coverage Territory" means:**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in SECTION V. 6. a. above; or
- c. All parts of the world if:
  - (1) The injury or damage arises out of:

- (a) Goods or products made or sold by you in the territory described in SECTION V. 6. a. above; or

- (b) The activities of a person whose domicile is in the territory described in SECTION V. 6. a. above, but is away for a short time on your business; and

- (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in SECTION V. 6. a. above or in a settlement we agree to.

**8. Section 11 "Insured Contract" of SECTION V – DEFINITIONS is replaced by the following:**

**11. "Insured Contract" means:**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by a Covered Cause of Loss (as provided in the Property Coverage Part or the Tenant Legal Liability Causes of Loss form which is a part of this policy), to the premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement
- c. Any easement or license agreement;
- d. Any indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

However, Paragraph V. 11. f. does not include that part of any contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (1) Preparing, approving or failing to prepare or approve maps, drawings,

opinions, reports, surveys, change orders, designs or specifications;

- (2) Giving directions or instruction, or failing to give them, if that is the primary cause of the injury or damage.

- b. Under which you, if an architect, engineer or surveyor, assume liability for injury or damage arising out of the insured's rendering or failing to render professional services including both those listed in SECTION V. 11. a. above and supervisory, inspection, architectural or engineering services.

9. Section 14 "Mobile Equipment" of **SECTION V – DEFINITIONS** is replaced by the following:

14. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, on which are permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in SECTION V. 14. a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;

- f. Vehicles not described in V. 14. a., b., c., d. or e. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered an "auto":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

All other terms of this policy remain the same.

Policy Number:

**AMENDMENT OF POLLUTION EXCLUSION - EXCEPTION FOR  
CARBON MONOXIDE WITHIN A BUILDING  
AMENDMENT**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**LIABILITY COVERAGE PART.**

Paragraph **(1) (a)** of the Pollution exclusion under SECTION I. A. 2. Exclusions Applicable to the Liability Coverage Part is replaced by the following:

This insurance does not apply to:

**Pollution**

- (1)** "Bodily injury," "personal injury" and "property damage" arising out of the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release, or escape of pollutants:

**(a)** At or from any premises, site or location which

is or was at any time owned or occupied by, or rented or loaned to, any insured;

However, Paragraph **(1) (a)** does not apply to "Bodily injury" if:

- i. Such "Bodily injury" is sustained within a building which is owned or occupied by, or rented or loaned to, any insured; and
- ii. Such "Bodily injury" is caused by carbon monoxide.

Policy Number: BK01116165

**OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM

**Premium: \$400.00**

Policy Number: BK01116165

**OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM

**Premium: \$875.00**

Policy Number: BK01116165

**OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

OFF-PREMISES GL EXPOSURE IS INCLUDED IN LIABILITY FORM

**Premium: \$30.00**



Policy Number: BK01116165

## Employee Benefits Liability (Claims-Made)

ACCOUNTANTS, ATTORNEYS, LAWYERS, ARCHITECTS AND ENGINEERS

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

#### LIABILITY COVERAGE PART.

This insurance does not apply to damages caused by an "employee benefits incident" which occurred before the Retroactive date.

The following is added to SECTION I - COVERAGE:

#### COVERAGE - EMPLOYEE BENEFITS LIABILITY

##### 1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of injury to any "employee," or the dependents or beneficiaries of any "employee" caused by an "employee benefits incident" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "employee benefits incident" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - LIMITS OF LIABILITY of this Additional Coverage; and
- (2) Our right and duty to defend end when we have used up the applicable limit of liability in the payment of judgments or settlements under this insurance.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under COVERAGE C - SUPPLEMENTARY PAYMENTS of this Additional Coverage.

- b. This insurance applies to an "employee benefits incident" only if:

- (1) The "employee benefits incident" takes place in the "coverage territory";

- (2) The "employee benefits incident" did not occur before the "Retroactive date" or after the end of the policy period; and

- (3) A claim for damages because of the "employee benefits incident" is first made against any insured in accordance with paragraph c. below, during the policy period or any Extended Reporting Period we provide under the EXTENDED REPORTING PERIODS FOR COVERAGE PROVIDED BY THIS ENDORSEMENT Section.

- c. A claim by any "employee" or the dependents or beneficiaries of any "employee" seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such claim is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with paragraph 1. a. above.

All claims for damages because of injury to the same "employee," including damages claimed by any beneficiary or dependent, arising out of the same "employee benefits incident" will be deemed to have been made at the time the first of these claims is made against any insured.

##### 2. Exclusions Applicable to this Additional Coverage:

This insurance does not apply to:

- a. Any dishonest, fraudulent, criminal or malicious act;
- b. Libel, slander, discrimination, or humiliation;

- c. Bodily injury, death, care and loss of services;
- d. Property damage, including the loss of use of property;
- e. Any liability or claim for failure of performance of contract by any insurer;
- f. Any liability or claim based on your failure to comply with any law concerning workers compensation, unemployment insurance, social security or disability benefits;
- g. Any liability or claim based on failure of stock to perform as represented by any insured;
- h. Any liability or claim based on advice given by any insured to participate or not to participate in stock subscriptions plans; or
- i. Liability of a fiduciary imposed by the Employee Retirement Income Security Act of 1974 (ERISA) as now or hereafter amended.

**3. SECTION II - WHO IS AN INSURED For This Additional Coverage:**

- a. If you are designated in the Declarations as:
  - (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner;
  - (2) A partnership, you are an insured. Your partners and their spouses are also insureds, but only with respect to the conduct of our business; or
  - (3) An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- b. Each of the following is also an insured:
  - (1) Your "employees," other than your "executive officers," authorized to act in the administration of "employee benefits"; and

- (2) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

- c. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

- (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (2) Coverage does not apply to an "employee benefits incident" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any:

- (1) Current partnership that is not shown as a Named Insured in the Declarations; or
- (2) Joint venture.

**4. SECTION III - LIMITS OF LIABILITY For This Additional Coverage:**

- a. The Limits of Liability shown below and the rules below fix the most we will pay regardless of the number of:
  - (1) Insureds;
  - (2) Claims made or "suits" brought; or
  - (3) "Employees," or dependents or beneficiaries of "employees," making claims or bringing "suits."
- b. The Aggregate Limit is three times the Each Claim Limit or \$4,000,000, whichever is lower. The Aggregate Limit is the most we will pay for all damages because of all claims covered by this insurance.
- c. Subject to SECTION III. b. above, the Each Claim Limit is \$300,000 or an amount equal to the Each Occurrence Limit shown in the Liability Coverage

Part Declarations, whichever is higher. The Each Claim Limit is the most we will pay for all damages because of any one claim.

- d. The Limits of Liability listed in Section III. b. and c. above are the most we will pay regardless of any Commercial Umbrella or Excess coverage provided by us.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

The limits of this insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

##### 5. SECTION V - DEFINITIONS OF TERMS Used In This Additional Coverage:

- a. "Coverage territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.
- b. "Employee" means a prospective, present or former employee of the Named Insured.
- c. "Employee benefits incident" means an act, error or omission in:
- (1) Giving counsel to "employees" with respect to "employee benefits" ;
  - (2) Interpreting "employee benefits" ;
  - (3) Handling of records in connection with "employee benefits" ;
  - (4) Effecting enrollment, termination or cancellation of "employees" under "employee benefits" ;

performed by a person authorized by the Named Insured to perform such services.

- d. "Employee benefits" means:

- (1) Group life insurance;
- (2) Group accident and health insurance;
- (3) Profit sharing plans;
- (4) Pension plans;
- (5) "Employee" stock subscriptions;
- (6) Workers compensation;
- (7) Unemployment insurance;
- (8) Social security;
- (9) Disability benefits insurance; and
- (10) Travel, savings or vacation plans.

- e. "Executive officers" means a person holding any of the officer positions created by your charter, constitution, by-laws or any similar governing document.

- f. "Suit" means a civil proceeding in which damages because of an injury caused by an "employee benefits incident" to which this insurance applies are alleged. "Suit" includes:

- (1) An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
- (2) Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

Retroactive date means the beginning date of this Coverage Part, if the Coverage Part has been in force continuously since that date. It is the earliest date that an "employee benefits incident" may be committed and cause injury covered by this Coverage Part.

6. SECTION IV. 2 and SECTION IV. 5 are replaced by the following:

**a. Duties In The Event Of An Employee Benefits Incident, Claim Or Suit.**

- (1) Regardless of whether the loss exceeds the deductible amount in paragraph 4. of SECTION III - LIMITS OF LIABILITY, you must see to it that we are notified as soon as practicable of any "employee benefits incident" which may result in a claim. To the extent possible, notice should include:

- (a) How, when and where the "employee benefits incident" took place;
- (b) The names and addresses of any injured "employee" dependents or beneficiaries of any "employee" and witnesses; and
- (c) The nature and location of an injury caused by the "employee benefits incident."

Notice of an "employee benefits incident" is not notice of a claim.

- (2) If a claim is received by any insured you must:

- (a) Immediately record the specifics of the claim and the date received; and
- (b) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim as soon as practicable.

- (3) You and any other involved insured must:

- (a) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (b) Authorize us to obtain records and other information;
- (c) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

- (d) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

- (4) No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

**b. Other Insurance.**

If other valid and collectible insurance is available to the insured for a loss we cover under this insurance, our obligations are limited as follows:

- (1) Primary Insurance.

This insurance is primary except when (2) below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in (3) below.

- (2) Excess Insurance.

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, and applies to an "employee benefits incident" on other than a claims-made basis, if:

- (a) The other insurance is in effect prior to the "Retroactive date"; or
- (b) The other insurance has a policy period which continues after the "Retroactive date."

When this insurance is excess, we will have no duty to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the

amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance.

**(3) Method of Sharing.**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance for all insurers.

**7. The following condition is added to SECTION IV - CONDITIONS:**

**Your Right To Claim And Employee Benefits Incident Information.**

We will provide the first Named insured shown in the Declarations the following information relating to this and any preceding employee benefits liability claims-made insurance we have issued to you during the previous three years:

- a. A list or other record of each "employee benefits incident" not previously reported to any other insurer, of which we were notified in accordance with paragraph 2. a. of this Section. We will include the date and brief description of the

"employee benefits incident" if that information was in the notice we received.

- b. A summary by policy year, of payment made and amounts reserved, stated separately, under the Aggregate Limit.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

You must not disclose this information to any claimant or any claimant's representative without our consent.

If we cancel or elect not to renew this insurance, we will provide such information no later than 30 days before the date of termination. In other circumstances, we will provide this information only if we receive a written request from the first Named Insured within 60 days after the end of the policy period. In this case, we will provide this information within 45 days of receipt of the request.

We compile claim and "employee benefits incident" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representations or warranties to insureds, insurers, or others to whom this information is furnished by or on behalf of any insured. Cancellation or nonrenewal will be effective even if we inadvertently provide inaccurate information.

- 8. SECTION IV. 3. and SECTION IV. 6. do not apply to coverage provided by this Additional Coverage.

- 9. The following Section is added:

**EXTENDED REPORTING PERIOD FOR COVERAGE PROVIDED BY THIS ENDORSEMENT:**

- a. We will provide one or more Extended Reporting Periods, as described below, if:
  - (1) This insurance is cancelled or not renewed; or
  - (2) We renew or replace this insurance with insurance that has a Retroactive date later than the date shown in the Schedule.



- b. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to claims for an "employee benefits incident" that occurs before the end of the policy period but not before the Retroactive date, if any, shown in the Schedule.

Once in effect, Extended Reporting Periods may not be cancelled.

- c. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:

- (1) Five years for claims because of injury arising out of an "employee benefits incident" reported to us, not later than 60 days after the end of the policy period, in accordance with paragraph 2. a. of EMPLOYEE BENEFITS LIABILITY CONDITIONS (Section IV); or

- (2) Sixty days for all other claims.

The Basic Extended Reporting Period does not apply to claims that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.

- d. A Supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in paragraph c. above, ends.

The first Named Insured must give us a written request for the endorsement within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- (1) The exposures insured;
- (2) Previous types and amounts of insurance;
- (3) Limits of Insurance available under this insurance for future payment of damages; and
- (4) Other related factors.

The additional premium will not exceed 200% of the annual premium for this insurance.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period, including provision to the effect that the insurance afforded or claims first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

- e. The Basic Extended Reporting Period does not reinstate or increase the Limits of Insurance.
- f. If the Supplemental Extended Reporting Period is in effect, we will provide the separate aggregate limit of insurance described below, but only for claims first received and recorded during the Supplemental Extended Reporting Period.

The separate aggregate limit of insurance will be equal to the dollar amount shown in the Schedule in effect at the end of the policy period.

SECTION III b. of this ADDITIONAL COVERAGE will be amended accordingly. The Each Claim Limit shown in the Schedule will then continue to apply, as set forth in SECTION III. C. of this Additional Coverage.